

,
 Petitioner,
 v.
**SPECIAL SCHOOL DISTRICT
 OF ST. LOUIS COUNTY**
 Respondent.

Comes now the Three Member Panel empowered hereunder, and for its findings of fact, conclusions of law and decision in this matter, state as follows.

1. Hearing of this matter was convened at 8:37 AM Central Standard Time on December 4, 2003 at the Board of Education meeting room on the campus of the Special School District of St. Louis County, Missouri (SSD).
2. Present and representing SSD was Robert Thomeczek, attorney at law.
3. Present and representing the student was her mother.
4. Present was the Panel, one Mary Jones, one Sue Dame and David Potashnick, attorney Chairperson.
5. The Rule of sequestration of witnesses was called for by Mr. Thomeczek, and was in effect the duration of the hearing.
6. The hearing was closed to the public at the request of Ms. .
7. (Student) was born, and is residing within the Riverview School District with her mother,.

8. The placement effective for Student for the 2003-2004 school year is the Riverview School District Central Middle School, with special education being provided in all subjects except art and physical education.
9. Student's current diagnoses include language impairment in syntax, semantics, morphology, and pragmatics; and learning disabilities in reading comprehension, math calculation, and math reasoning.
10. After Student was identified, she was found eligible for special education services following an evaluation by the Ferguson-Florissant School District's Early Childhood Special Education program in September, 1994, and an Early Childhood IEP was developed and implemented for her in October, 1994.
11. Student moved into the Riverview Gardens School District (RGSD) in November 1997, and was enrolled at the Glasgow Elementary School.
12. Student was transferred at her parents' request to Highland Elementary in the RGSD, where she attended school her 3rd, 4th, 5th and 6th grade school years under various IEP's and modified curricula stemming therefrom, and received passing grades at these levels.
13. Student's mother requested changes in a proposed IEP dated April 29, 2003 to the effect that Student be placed in a separate SSD school (phase III school) and that transportation be made a related service so that Student could ride the bus to school with other kids receiving special services, rather than with general population students as had been the status quo.
14. The SSD IEP team refused Ms. 's requests and issued two Notices of Action – Refused, in regard to the requests made by Student's mother to amend the April 29, 2003 IEP.
15. In regard to the transportation of Student, her bus stop location was moved at Student's mother's request to a location three houses down from the Student's residence, at which location Ms. can physically see Student being picked up, and at which location a police substation is located across the street.
16. Student's mother requested a resolution conference regarding the Actions Refused by SSD in May 2003, by letter to Dr. Kachris, Superintendent of SSD, which conference was held May 30, 2003.

17. Missouri Department of Elementary and Secondary Education received Student's Request for Due Process September 5, 2003, in which Student was seeking to have this Panel Order that Student be retained in the Sixth Grade, placed in a "Phase III" school, and be subjected to additional testing. The Due Process Request also alleged, that Student's reading level had dropped to 2.9, and that generally, the school work the Student was supposed to have mastered, according to her grading, was not actually learned by the Student.
18. SSD conducted diagnostic testing of Student for reevaluation and the staff meeting concerning the same was conducted September 11, 2003. According to that reevaluation testing, Student was identified as suffering educational disabilities in the areas of language impairment (syntax, semantics, morphology, and pragmatics) and learning disabilities (reading comprehension, math calculation and math reasoning). A new amended proposed IEP was developed by the SSD at that time. **(Resp. Ex. R-62,63)**
19. The new proposed IEP places Student in the RGSD Central Middle School, with special services in all core curricula except art, physical education, and transportation.
20. Student has made passing (modified) grades and progress towards her IEP goals, according to her sixth and seventh grade report cards. **(Resp. Ex. R-42, 47,49,53, 64,67 and 68)**
21. Student has communicated her desire to faculty of SSD that she remain in the placement at RGSD Central Middle School.
22. Ms. was allowed to present her case first through her own narrative testimony, with admission into evidence of all documents she presented without objection by the SSD, and closed her case having been allowed to present such testimony and documentation as she wished.
23. Mr. Thomeczek was allowed to present his case second, through the testimony of witnesses called, and with admission into evidence all records he presented as the SSD's exhibits, without objection by Ms. , and closed his case, having been allowed to present such oral testimony and written documentation as he wished.

CONCLUSIONS OF LAW

1. This case arises under the Individuals with Disabilities Education Act (IDEA), 20 USC sect. 1400 et seq.; the IDEA implementing regulations, 34 CFR Part 300; Missouri Special Education Statutes, sects. 162.670-162.999 RSMo.; and the Missouri State Regulations implementing these Statutes at 5 CSR sects. 70-742.140. This Panel has jurisdiction to decide the issues identified in the Request for Due Process presented.
2. IDEA provides funding for education agencies to assist them in educating qualifying students, so long as the education providers adhere to the provisions of the Act. The basic provision of the Act in reference to the issues presented in this Due Process Request are the provision of a free, appropriate public education, meeting the unique needs of each student identified as qualifying for such services, in the least restrictive environment possible consistent with that student's individual needs as established by appropriate professional evaluation.
3. The FAPE requirement of IDEA is satisfied when the educational agency provides personalized education with sufficient special services to insure that each child so treated shall benefit educationally from said services.
4. The main instrument for implementing FAPE under IDEA is the IEP, or Individualized Education Program. This program is usually the result of cooperation between the Parents, Teachers, Professionals in the matters of the Student's particular special needs, and District representatives, and is meant to set out the present academic levels of the Student, establish annual and shorter term goals and objectives for improvement of the Student's academic progress, and describes the instruction and special services necessary to enable the Student to meet his or her specific goals and objectives.
5. In this particular case, all necessary parties to the formation and design of this

Student's various IEP's were allowed to participate in and have input into the formation and substantive content of the same.

6. Part and parcel to the FAPE requirement of the IDEA is the concept of educating students in the Least Restrictive Environment (LRE) so that children with special needs are educated to the maximum extent possible with their non-disabled peers and appropriate with regard to that child's individual limitations. In addition the LRE requirement is that students with special needs be removed from education with their non-disabled peers only when the nature or severity of the disability is such that education in regular classes with the use of special resources and services cannot be achieved satisfactorily. **(34 CFR 300.550(b) and sect. 162.680.2 RSMo.)**
7. Transportation, meals and recess are included in the list of activities that special needs students should enjoy with their non-disabled peers to the extent that inclusion in such activities is in the best interests of the special needs student involved, and is not adverse to the needs of other students. **(34 CFR 300.553)**
8. In regard to the Student in this Due Process Request, it is in her best interests to work with her non-disabled peers in the setting of the RGSD Central Middle School, in the areas of transportation to and from school, art classes, physical education classes, meals and recess.

DECISION

This Panel is persuaded, unanimously, that Student is capable of educational progress and achievement in the setting of the RGSD Central Middle School, with inclusion in the areas of art, physical education, recess, meals and transportation. We find that the "Phase III" school setting requested by Ms. would not be in Student's best interests and that it would not be the LRE appropriate to Student. We also find that retention of the Student in the

6th grade is not necessary, nor in her best interests, so long as she continues to show educational progress in her current placement.

This Panel finds, unanimously, that the Student’s current placement and the IEP of September 11, 2003 is appropriate to address Student’s special needs and allow Student to achieve academic progress in the Least Restrictive Environment.

It is recommended by this Panel that an Independent Evaluation of the Student be conducted to ascertain, on an independent basis, the Student’s current levels of achievement and special needs.

The Three Member Due Process Request Hearing Panel in this matter finds in favor of the SSD on all issues presented by the Due Process Request and evidence presented at hearing.

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| _____ | _____ |
| Mary Jones Panel Member date | Sue Dame Panel Member date |

David Potashnick Panel Chairperson date